## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:21-cv-00535-FDW-DCK

ZAYO GROUP, LLC,	)
Plaintiff,	) ) )
vs.	)
NETWORK RESOURCE TECHNOLOGIES CORP.,	ORDER )
Defendant.	)
Defendant.	) _)

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment, (Doc. No. 11), which has been fully briefed by the parties, (Doc. Nos. 14, 15). After reviewing the pleadings, exhibits, and applicable law, the Court DENIES Defendant's motion.

In short, it is clear from this record that the parties' evidence reveals a genuine dispute as to material facts that preclude entry of judgment for Defendant as a matter of law on Plaintiff's breach of contract claim. For example, the evidence indicates a dispute as to the terms of the parties' agreement and the parties' compliance with those terms. Accordingly, resolution of Plaintiff's breach of contract claim is appropriate for resolution by a jury.<sup>2</sup>

Although the parties appear to agree—at least in part—that a written agreement exists between them, the Court also denies summary judgment on Plaintiff's alternative theories for

<sup>&</sup>lt;sup>1</sup> The parties appear to agree that North Carolina state law governs this action. While Defendant's brief cites authorities applying other states' laws, it also cites to cases applying North Carolina law and—notably—does not explicitly contest Plaintiff's argument regarding the applicability of North Carolina law.

<sup>&</sup>lt;sup>2</sup> Defendant's Answer demands trial by jury. (Doc. No. 6, p. 11).

recovery. This ruling is without prejudice for Defendant to reassert its arguments at trial following

the close of Plaintiff's evidence.

In light of this ruling, the parties are hereby ORDERED to submit their jointly-prepared

pretrial submissions by Friday, October 28, 2022. See Doc. No. 8. The Court will conduct a

pretrial conference in this matter immediately following docket call on Monday, November 7,

2022.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment, (Doc.

No. 11), is DENIED.

TAKE NOTICE that a Pretrial Conference will take place at 9:15 a.m. on Monday,

November 7, 2022, immediately following docket call. The parties' pretrial submissions shall be

due by October 28, 2022.

IT IS SO ORDERED.

Signed: October 5, 2022

Frank D. Whitney

United States District Judge